

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457(EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J.
MINUCCI,

Defendants.

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VIDEOCONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE, INC.
160 Broadway
New York, New York

October 14, 2020
9:41 a.m.

DEPOSITION of POLICE OFFICER SHANEIL A.

MITCHELL, named herein as **POLICE OFFICER**

SHANIEL J. MITCHELL, a Defendant in the

above-entitled action, held remotely via Zoom

videoconference, pursuant to Order, taken

before Tania C. Pedrosa, a shorthand reporter

and Notary Public within and for the State of

New York.

LEX #159616-A



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A p p e a r a n c e s :

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FILE No.: 2017-066702

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

THE REPORTER: This deposition is being conducted via Zoom videoconferencing. All parties present are appearing remotely and are confirming that they can hear and see through the video without any technical issues.

Would counsel and the witness please confirm.

THE WITNESS: Yes.

MR. WEINER: Yes, confirmed.

MR. ABOUSHI: Confirmed.

THE REPORTER: Before I swear in the witness, I will ask counsel to stipulate on the record that due to the national emergency pandemic, the court reporter may swear in the deponent even though they are not in the physical presence of the deponent, and that there is no objection to that at this time, nor will there be an objection to

it at a future date.

MR. WEINER: Agreed.

MR. ABOUSHI: Yes.

THE REPORTER: And, Counsel,
can you represent that to the
best of your knowledge and
belief, the witness appearing
today via videoconference is
indeed Police Officer Shaneil J.
Mitchell?

THE WITNESS: A. Mitchell,
not J. A.

THE REPORTER: Thank you.
And the answer is yes?

THE WITNESS: Yes.

MR. WEINER: Yes.

S H A N E I L A. M I T C H E L L, the
witness herein via videoconference,
having first been duly sworn by a
Notary Public of the State of New York,
was examined and testified as follows:

EXAMINATION BY

MR. ABOUSHI:

Q State your name for the record,

S. A. Mitchell

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Q Now, you said you worked with Jason Marshall while you were both at the 77, correct? He was an auxiliary officer?

A Yes.

Q Okay. At some point did his -- did his employment cease?

A I don't know.

Q Do you know if he's still employed --

A I don't know.

Q -- at the NYPD?

A I don't know.

Q Okay. I want to talk about the night of the incident.

What was your tour that night?

A 5:30 p.m. by 0205 in the morning.

Q Okay. So 5:30 in the afternoon until, you said, 0205, so is that --

A Yeah, 2:05 in the morning, a.m.

Q Okay. 2:05 in the morning.

All right. And what was your assignment?

A Anti-crime.

Q Okay. And did you have partners

S. A. Mitchell

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that night?

A I was with officer -- I was with Officer Minucci that night.

Q Okay. It was you and him in anti-crime?

A Yes.

Q Okay. Do you know what time you reported to work that day?

A Probably 5:30.

Q What was your assignment that night?

A Anti-crime.

Q Okay. Anything specific?

A No, just route -- route -- routine patrol within the -- trying to conduct enforcement within the precinct.

Q Okay. The night of the incident, did you speak with Jason Marshall?

A Yes, right before the incident happened, yeah.

Q Okay. And how did you communicate with him?

A Phone.

Q Did he call you? Did you call

1 S. A. Mitchell 53

2 him?

3 A He called me.

4 Q Do you know how he got your
5 number?

6 A I'm pretty sure Officer Cespedes
7 gave him my number.

8 Q Okay. How are you sure about
9 that?

10 A Because I was speaking to Officer
11 Cespedes before that.

12 Q And what were you speaking with
13 Officer Cespedes about?

14 A He was giving me the information
15 about a male with a firearm at the location
16 on Bridge Street.

17 Q Okay. And you said that after
18 you spoke with Cespedes, you spoke with Jason
19 Marshall?

20 A Yes.

21 Q Okay. And what did he say to
22 you?

23 A He gave me the description of two
24 males. One of the males had a bag in his
25 hand and the other male was the one with the

1 S. A. Mitchell 54

2 firearm in his waistband.

3 Q Okay. And is that the only
4 conversation that you had with Jason Marshall
5 that night?

6 A Yes.

7 Q Okay. And how long did that
8 conversation last?

9 A A minute maybe.

10 Q Okay. Was anyone with you when
11 that conversation occurred?

12 A Yes, whoever I was in the car
13 with. It was Officer Minucci and Sergeant
14 Diab.

15 Q Okay. Now, you were already on
16 Bridge Street when you had this conversation
17 with Officer Marshall, correct?

18 MR. WEINER: Objection.

19 Q You can answer. Unless your
20 counsel tells you not to answer --

21 A Yes.

22 Q -- please answer. Thank you.

23 Okay. Now, prior to that -- to
24 arriving at Bridge Street, was there an
25 occasion that you went back to the 77?

1 S. A. Mitchell 55

2 A Well, I was at the 77 when I
3 initially got the phone call from --

4 Q Oh, okay.

5 A -- from Officer Cespedes.

6 Q Okay. So why don't you walk me
7 through that night. So you were out on
8 patrol, correct, doing anti-crime and at some
9 point you go back to the precinct? Is that
10 the sequence of events?

11 A Yes.

12 Q Okay. Why did you go back to the
13 precinct?

14 A I think we just went back to the
15 precinct to probably use the bathroom maybe,
16 I think.

17 Q Okay. And what happened next?

18 A I received a phone call from
19 Officer Cespedes giving me information about
20 a male with a -- a male with a firearm at the
21 -- at the -- at the -- at Amarachi Prime. He
22 -- and he told me he got the information from
23 a security guard at the time at the -- at
24 Amarachi Prime at the entrance.

25 Q Okay. So he was essentially

1 S. A. Mitchell 56

2 telling you what someone else had told him,
3 correct?

4 A Yes.

5 Q Okay. And at that point you
6 didn't speak directly with anyone at Amarachi
7 Prime, correct?

8 A No.

9 Q That's correct to my question?

10 A Yes, yes, that -- yes, that's
11 correct.

12 Q Thank you. Okay. And so once
13 you spoke with Officer Cespedes, what, if
14 anything, happened next?

15 A I went to find Sergeant Diab so
16 -- so I could relay the information to him
17 and he spoke with Officer Cespedes as well.

18 Q Okay. Were you present when they
19 had that conversation?

20 A I do not remember.

21 Q Okay. At that point Sergeant
22 Diab was in the precinct; is that correct?

23 A Yes.

24 Q Was he there that night --

25 A Yes.

1 S. A. Mitchell 60

2 Q Okay. Where did they walk after
3 they left the location?

4 A They exited the front of the club
5 and they made a right-hand turn going --
6 traveling on Bridge Street and then they --
7 when they got to the corner of Nassau and
8 Bridge, they made the right going down
9 Nassau.

10 Q Okay. And in your car, who was
11 driving?

12 A I was driving.

13 Q Okay. And where was Sergeant
14 Diab?

15 A Sergeant Diab was the passenger,
16 front passenger.

17 Q Okay. And where was Officer
18 Minucci?

19 A He was in the -- he was in the
20 back seat behind me.

21 Q Behind the driver's side?

22 A Yes.

23 Q Okay. And what happened after
24 Mr. Benbow and Mr. Bradley turned onto Nassau
25 Street?

S. A. Mitchell

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A Well, I was on the phone with Marshall and he's -- and he let me know the -- there's a guy with a bag and there's a -- the other guys -- the guy with the firearm. They exited the club which was Benbow and Bradley. And that is when I started to -- once they exited is when I started to drive and pretty much follow behind them a little bit.

Q Okay. And what happened after that?

A After that when they made the right, I made the right as well going down Nassau, drove down a couple of car lengths. My vehicle was in front of them a little bit and at that point they looked over to our vehicle. It seem -- it seemed like they knew we were police because they started to move a little bit and then at that point Sergeant Diab exited the vehicle, yelled out "police" with his gun drawn and Bradley went straight to the ground and Benbow ran -- began to run in the opposite direction.

Q Okay. So when you jumped out of

1 S. A. Mitchell 63

2 Did he tell you he heard the
3 commands?

4 A No.

5 Q So that's an assumption that
6 you're making when --

7 A Yes.

8 Q -- he went to the ground?

9 A Yes.

10 Q And in terms of how you exited
11 the vehicle, can you describe that to me?

12 A I exited the driver's side and
13 went towards the rear of the car.

14 Q Okay. Did you have your gun out
15 at that point?

16 A Yes.

17 Q Okay. And Officer Diab had his
18 gun out as well, correct?

19 A Yes, when he exited his side,
20 yes.

21 Q Okay. And Officer Minucci, he
22 had his gun out?

23 A Yes.

24 Q Okay. And at that point
25 Mr. Benbow, you testified, turned and ran in

1 S. A. Mitchell 83

2 Q Were you ever asked to testify in
3 regards to Mr. Benbow?

4 A I honestly do not recall if I did
5 or I didn't.

6 Q Did you meet --

7 A It's been a while.

8 Q Did you meet with any ADAs in
9 regards to Mr. Benbow?

10 A I -- I do not remember if I did
11 or I didn't.

12 Q Are you familiar with the term
13 "blue wall of silence?"

14 A Yes.

15 Q Okay. What is your understanding
16 of what that term means?

17 A It refers to being another police
18 officer -- pretty much protecting other
19 police officers.

20 Q So essentially under the blue
21 wall of silence, police officers cover up for
22 each other, correct?

23 MR. WEINER: Objection.

24 A Yes.

25 Q Did you discharge your firearm

1 S. A. Mitchell 84

2 that night?

3 A No.

4 MR. ABOUSHI: All right.

5 Can we just take a ten-minute
6 break, please?

7 MR. WEINER: Sure.

8 (Whereupon, a short recess
9 was taken.)

10 BY MR. ABOUSHI:

11 Q Officer Mitchell or Detective
12 Mitchell, I think I'm done, just a few
13 touch-ups here and there.

14 So in terms of the night of the
15 shooting, you testified that you had driven
16 your unmarked police vehicle up past
17 Mr. Benbow and Mr. Bradley and stopped,
18 correct?

19 A Yes.

20 Q Okay. And you came out of your
21 car and you went towards the rear of your
22 vehicle, correct?

23 A Yes.

24 Q And at that point specifically as
25 to Mr. Benbow, he turned around and ran in

1 S. A. Mitchell 96

2 waistband and the time when you heard the
3 first gunshot was it?

4 A Moments -- moments later.

5 Q Okay. How many -- would you say
6 more or less than five seconds?

7 A Yes, yes.

8 Q More or less than five seconds?

9 A Oh --

10 MR. ABOUSHI: Objection.

11 A Less, less than five seconds.

12 Q Okay. And how many gunshots --
13 how many gunshots were there?

14 A There was multiple.

15 Q Okay. And so does "multiple"
16 mean -- was it -- was it more than -- did you
17 hear more than two?

18 A Yes.

19 Q Okay. Was it more than three?

20 A I don't recall if it was more
21 than three.

22 Q How much time transpired between
23 the first and the last gunshot?

24 A It was -- it was quick, a second
25 or two maybe.

1 S. A. Mitchell 99

2 mean, this is completely
3 inappropriate.

4 MR. WEINER: You have your
5 objection.

6 MR. ABOUSHI: And note for
7 the record that I'm going to move
8 to strike this entire testimony.

9 If you want to just testify
10 and have him cosign on it, then
11 you should do that by way of an
12 affidavit.

13 MR. WEINER: Okay. You
14 heard the -- you -- your
15 objection is noted.

16 Q My question -- can you -- I asked
17 you did you hear a clanking noise or anything
18 like that?

19 A Well, I heard a metal object hit
20 the ground -- what sounded like a metal
21 object.

22 Q Okay. How long after the
23 gunshots did you hear a metal -- what sounded
24 like a metal object hit the ground?

25 A It was -- it was moments, a

S. A. Mitchell

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second or two.

Q Okay. When you -- you said -- you testified that you -- you approached Mr. Benbow after you got out of the car?

A Yes.

Q Okay. Did you observe -- did you observe a gun in his vicinity?

A Yes.

MR. ABOUSHI: Objection.

Q Okay. Where was the gun positioned in relationship to Mr. Benbow?

A Probably an arm's reach from -- from where his body was.

Q Okay. Do you remember -- do you remember exactly -- was it closer to -- for example, was it closer to his left or right arm?

A I -- I don't remember which -- which arm it was close to.

Q Okay. I just want to ask you -- you were asked a question -- some questions about a blue wall of silence.

A Yes.

Q Do you remember that? And you